

REMARKS

Applicant, by the amendments presented above, has made a concerted effort to present claims which more clearly define over the prior art of record, and thus to place this case in condition for allowance.

Currently, claims 1-13 are pending.

Allowable Subject Matter

Applicant acknowledges with appreciation that claims 5-7 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Specification and Drawings

Pages 4-6 have been amended to include reference numerals 113, 114, 120, 140, 164 and 204 which are shown in the drawings. Reconsideration of the objection to the drawings is requested.

The Examiner provided the proper language and format for an Abstract. Applicant requests to be advised if the Examiner is objecting the language and format of the Abstract and, if yes, the basis for the objection.

Claim Rejections - 35 U.S.C. §102

Claims 1, 2 and 13 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by United States Patent No. 3,972,326 to Brawn.

Claims 1 and 13 have been amended to positively claim the body of liquid has substantially constant level in use. Applicant submits that this is not possible in Brawn because the vapour in the air condenses in the liquid, thus raising the level over time. In Brawn, the level to which the conduit is submerged does not effect the pressure delivery to the user. In fact, no pressure is delivered to the user if it is a passive system. Brawn is not intended to pass the expiratory gas to provide an adjustable constant back pressure (or CPAP level), but Brawn instead relates to respiratory inhalation specifically for ingesting liquids. Therefore, Applicant submits that Brawn does not anticipate amended claims 1 and 13.

Reconsideration and allowance of claims 1 and 13 is requested.

In addition, with regard to claim 1, Applicant submits that if the full expiratory flow passed through the prior art surface, bubbling would result in liquid being expelled through the unshielded outlet. Over time, humidity in the gas would condense, thereby raising the level. Thus, over time, the level of water may increase or decrease and is not constant in use. In either case, Applicant submits that this does not result in a constant water level and therefore, constant mean pressure delivered to the patient as is required by amended claim 1. Therefore, Reconsideration and allowance of claim 1 is requested.

Claim 2 is dependent upon claim 1 which Applicant submits is in condition for allowance. Reconsideration and allowance of claim 2 is requested.

Claim Rejections - 35 U.S.C. §103

Claims 3 and 4 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Brawn. Claims 3 and 4 are dependent upon claim 1 which Applicant submits is in condition for allowance. Reconsideration and allowance of claims 3 and 4 is requested.

Claim Objections

Claims 8-12 were objected to. Claims 8-12 have been amended to place the dependency into proper United States format and consideration on the merits is requested.

Claims 8-10 are dependent upon claim 1 which Applicant submits is in condition for allowance. Consideration and allowance of claims 8-10 is requested.

Claim 11 has been amended to be independent. Applicant submits that the prior art does not disclose a gas supply . . . an interface . . . an inhalatory conduit . . . from said gas supply to said interface, . . . a body of liquid, . . . said distal end [of said exhalatory conduit] submerged in said body of liquid, . . . said patient is delivered a substantially constant mean pressure, said mean pressure adjusted by the level to which said distal end is submerged in said body of water.” Therefore, Applicant submits that claim 11 is allowable over the prior art of record. Entry and consideration of claim 11 is requested.

Claim 12 is dependent upon claim 11 which Applicant submits is in condition for allowance. Consideration and allowance of claim 12 is requested.

Information Disclosure Statement

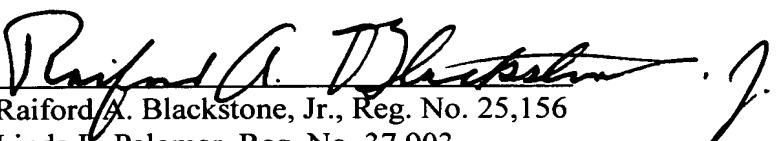
Applicant submitted an Information Disclosure Statement on December 15, 2000, a copy of which is enclosed without references. Enclosed is the return postcard indicating that it was received. Consideration of the Information Disclosure Statement and return of the initialed Form PTO-1449 is requested.

In view of the above Amendments and Remarks, Applicant respectfully submits that the claims of the application are allowable over the rejections of the Examiner. Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

Dated: Sept. 30, 2003

By:


Raiford A. Blackstone, Jr., Reg. No. 25,156
Linda L. Palomar, Reg. No. 37,903
TREXLER, BUSHNELL, GIANGIORGI
BLACKSTONE & MARR, LTD.
105 W. Adams Street
Suite 3600
Chicago, Illinois 60603
(312) 704-1890

561979